

(2016) 09 OHC CK 0046
In the Orissa High Court
Case No : W.P.(C). No.13744 of 2016

M/s. HPCL, BBSR

APPELLANT

Vs

Government of India

RESPONDENT

Date of Decision : 08-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(1), 10(2A)(1)(d), 2(s)

Citation : (2016) 151 FLR 964 : (2016) 4 LLJ 148

Hon'ble Judges : Kumari Sanju Panda and Shri Sujit Narayan Prasad, JJ.

Bench : Division Bench

Advocate : M/s. Nitish Ku. Mishra, A.K. Roy and A. Mishra, Advocates, for the Petitioner; Additional Government Advocate, for the Opposite Parties

Final Decision : Dismissed

Judgement

S.N. Prasad, J. - This writ petition is against the order dated 2.11.2015 issued under the signature of the Under Secretary to Government of India, Ministry of Labour, New Delhi whereby and where under the central Government in exercise of power conferred under clause(d) of sub-section(1) and sub-section(2A) of Section 10 of the Industrial Disputes Act, 1947 referred the dispute for adjudication to the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar and the terms of reference is as follows:

"Whether the disengagement of trained and experienced workmen Shri A.K. Satpathy, Shri H.K. Sahoo, Shri D.K. Samal & S.K. Mahapatra who had worked with HPCL from 2009 to 2014 continuously through different contractors for Aviation Operation in Bhubaneswar Airport is legal and/or justified? If not, what relief the workmen are entitled to ?"

2. Facts of the case in brief is that the petitioner is a company incorporated under the Companies Act and is a Government of India Undertaking falling under the administrative control of the Ministry of Petroleum and Natural Gas, New Delhi. The petitioner-company is engaged in refining of imported and indigenous

crude oil, storage and marking of petrol, diesel, LPG, ATF, Lube oils, Furnace Oil and other petroleum products. Having its Zonal Marking offices in different parts of the country having regional offices, OLPT Bottling Plants, Instalments/Terminals, Depots, Pipelines, Aviation Service Facility and hospitality locations. Bhubaneswar Aviation Service Facility establishment was one of such units of HPCL. The activities of the petitioner-company, which are regular and perennial in nature requiring adequate still, are carried out through permanent workers engaged by the petitioner. However, some of the activities, which are non-perennial in nature and where work is of intermittent nature, are carried out on contract basis by engaging contractors through competitive bidding system as per the procedure followed by the petitioner like all Public Sector Companies in line with the Government of India guidelines. For such purpose, the contractors appoint/engage their own workmen, who are known as contract labour and the petitioner has absolutely no control in the selection, appointment, supervision and deployment of the contract labour. The contractors depute their own supervisors to supervise the jobs of the contract labour by giving instructions to the contract workmen in line with the job description required to be carried out under the contract signed with the petitioner. One M/s. Rajdhani Security Services (opposite party no.6) was awarded the contract vide order dated 28.3.2014 for a period of one year for providing DGR Refuelling Manpower including HMV Drivers and Crew Men for the Bhubaneswar ASF location of the petitioner company. Opposite parties 2 to 5 were engaged by the said opposite party no.6-contractor as contract labourers for the purpose of fulfilment of the said contract. It was the sole prerogative of the contractor, whether to engage new workers or to continue with the workers, who had been engaged by the previous contractor and the petitioner had no role to pay in the selection, supervision and service condition of the contract labour deployed by the contractor.

Due to reduction in business at the Bhubaneswar Airport, the petitioner has stopped its ASF operation at the Bhubaneswar Airport w.e.f. 1.8.2014 and accordingly vide letter dated 30.7.2014 the contract awarded to the opposite party no.6 was terminated by written communication. Opposite parties 2 to 5 raised a frivolous complaint before the Central Labour Authorities at Bhubaneswar claiming to be working as outsourced employees at the petitioner-company since 2009 after being provided training by the HPCL but to have been rendered jobless as HPCL suspended operations at Bhubaneswar Airport in favour of Bharat Petroleum Corporation Limited. The workmen raised complaint which was admitted into conciliation by Assistant Labour Commissioner(Central), Bhubaneswar vide letter dated 7.8.2014 and subject matter of conciliation was:

"Industrial Dispute between the management of M/s. Rajadhani Security Services, contractor of HPCL, Bhubaneswar v. Shri A.K. Satpathy and 3 others over termination of services."

3. The petitioner-company appeared before the Assistant Labour Commissioner

and submitted its views containing that the opposite parties 2 to 5 had been engaged by the contractor and as such they cannot be treated as "workmen" of the petitioner-company as per the definition provided under section 2(s) of Industrial Disputes Act, 1947. The Conciliation Officer without considering objection of the petitioner-company has taken divergent view of submission of failure report by the appropriate Government vide order dated 2.11.2015 in exercise of power under clause(d) of sub-section(1) and sub-section(2A) of Section 10 of the Industrial Disputes Act, 1947, referred the dispute before the Tribunal having its jurisdiction to answer the reference.

According to the learned Senior Counsel for the petitioner the reference is not admissible for the reason that this reference has been made presuming the fact that the opposite party-workmen had been engaged in HPCL from 2009 to 2014 continuously while the fact is quite different since the opposite party-workmen had been engaged by different contractors and as such the term of reference cannot be passed presuming the fact that the opposite party-workmen had worked with the HPCL for the period from 2009 to 2014.

It has been submitted that the reference cannot be allowed to be adjudicated by the tribunal so far the petitioner-company is concerned, since the opposite party-workmen have never been engaged by them rather they had been engaged by contractors and the moment the work has been closed and handed over to the BPCL, the petitioner company since has got no work as rescinded the term with the contractor and as such before making reference the appropriate Government ought to have been taken into consideration this aspect of the matter and then only term of reference has to be referred before the Tribunal.

4. Since the issue which has been raised by the petitioner which involves legal question as well as factual aspect, we have thought it proper to decide the issue.

We have heard learned senior counsel for the petitioner. Before answering the issue raised by the petitioner, it is necessary to refer the provisions of Section 10 of the Industrial Disputes Act.

"10. Reference of disputes to Boards, courts or Tribunals-

(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time], by order in writing-

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a court for inquiry; or

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule

or the Third Schedule, to a Tribunal for adjudication:

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause

(c):

(Provided that where the dispute relates to a public utility service and a notice under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced: (Provided also that where the dispute in relation to which the Central Government is the appropriate government, it shall be competent for that Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government]

(1A) Where the Central Government is of opinion that any industrial dispute exists or is apprehended and the dispute involves any question of national importance or is of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such dispute and that the dispute should be adjudicated by a National Tribunal, then, the Central Government may, whether or not it is the appropriate Government in relation to that dispute, at any time, by order in writing, refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule to a National Tribunal for adjudication.]

(2) Where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, court, [Labour Court, Tribunal or National Tribunal], the appropriate government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly.

(2A) An order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section shall specify the period within which such Labour Court, Tribunal or National Tribunal shall submit its award on such dispute to the appropriate government: Provided that where such industrial dispute is connected with an individual workman, no such period shall exceed three months: Provided further that where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, to the Labour Court, Tribunal or National Tribunal for extension of such period or for any other reason, and the presiding officer of such Labour Court, Tribunal or National Tribunal considers it necessary or expedient to extend such period, he may for reasons to be recorded in writing, extend such period by such further period as he may think fit:

Provided also that in computing any period specified in this sub-section, the period, if any, for which the proceedings before the Labour Court, Tribunal or National Tribunal had been stayed by any injunction or order of a civil court shall be excluded:

Provided also that no proceedings before a Labour Court, Tribunal or National Tribunal shall lapse merely on the ground that any period specified under this sub-section had expired without such proceedings being completed.]

(3) Where an industrial dispute has been referred to a Board, Labour Court, Tribunal or National Tribunal] under this section, the appropriate Government may by order prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.

(4) Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal] under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be,] shall confine its adjudication to those points and matters incidental thereto.

(5) Where a dispute concerning any establishment or establishments has been, or is to be, referred to a Labour Court, Tribunal or National Tribunal] under this section and the appropriate Government is of opinion, whether on an application made to it in this behalf or otherwise, that the dispute is of, such a nature that any other establishment, group or class of establishments of a similar nature is likely to be interested in, or affected by, such dispute, the appropriate Government may, at the time of making the reference or at any time thereafter but before the submission of the award, include in that reference such establishment, group or class of establishments, whether or not at the time of such inclusion any dispute exists or is apprehended in that establishment, group or class of establishments.]

(6) Where any reference has been made under sub-section (1A) to a National Tribunal, then notwithstanding anything contained in this Act, no Labour Court or Tribunal shall have jurisdiction to adjudicate upon any matter which is under adjudication before the National Tribunal, and accordingly-

(a) if the matter under adjudication before the National Tribunal is pending in a proceeding before a Labour Court or Tribunal, the proceeding before the Labour Court or the Tribunal, as the case may be, insofar as it relates to such matter, shall be deemed to have been quashed on such reference to the National Tribunal; and

(b) it shall not be lawful for the appropriate Government to refer the matter under adjudication before the National Tribunal to any Labour Court or Tribunal for adjudication during the pendency of the proceeding in relation to such matter before the National Tribunal.

[Explanation: In this sub-section "Labour Court" or "Tribunal" includes any court

or Tribunal or other authority constituted under any law relating to investigation and settlement of industrial disputes in force in any State.]

(7) Where any industrial dispute, in relation to which the Central Government is not the appropriate government, is referred to a National Tribunal, then, notwithstanding anything contained in this Act, any reference in section 15, section 17, section 19, section 33A, section 33B and section 36A to the appropriate Government in relation to such dispute shall be construed as a reference to the Central Government but, save as aforesaid and as otherwise expressly provided in this Act, any reference in any other provision of this Act to the appropriate Government in relation to that dispute shall mean a reference to the State Government.]

(8) No proceedings pending before a Labour Court, Tribunal or National Tribunal in relation to an industrial dispute shall lapse merely by reason of the death of any of the parties to the dispute being a workman, and such Labour Court, Tribunal or National Tribunal shall complete such proceedings and submit its award to the appropriate government.

Section 10(1) starts with the words "if any industrial dispute exists or is apprehended" then the appropriate Government may refer the dispute before the appropriate authority for its adjudication. Scope of section 10(1) of the Industrial Disputes Act, 1947 has been discussed by the Hon'ble Supreme Court in the case of *State of Madras v. C.P. Sarathy*, (1953) 1 LLJ 174(SC) wherein their Lordships has been pleased to lay down the following propositions:-

(i) the Government should satisfy itself, on the facts and circumstances brought to its notice, in its subjective opinion that an "industrial dispute" exists or is apprehended;

(ii) the factual existence of a dispute or its apprehension and the expediency of making reference are matters entirely for the Government to decide;

(iii) the order making a reference is an administrative act and it is not a judicial or a quasi-judicial act; and

(iv) the order of reference passed by the Government cannot be examined by the High Court in its jurisdiction under Article 226 of the Constitution to seek if the Government had material before it to support the conclusion that the dispute existed or was apprehended.

However, these propositions were passed when unamended Act was in vogue, which did not contain the words "where the appropriate Government is of opinion", the court implied the formation of "subjective opinion" by the appropriate government, in the words "if any industrial dispute exists or is apprehended". This proposition has been observed by the Hon'ble Apex Court in the case of *Newspapers Ltd. v. I.T.*, (1957) 2 LLJ 1 (SC).

In another judgment rendered by the Hon'ble Apex Court in the case of *Western*

India Match Co. v. WIMCO Workers' Union, AIR 1970 SC 1205, wherein it was so held presumably because the Government cannot go into the merits of the dispute, its function being only to refer such a dispute for adjudication so that the industrial relations between the employer and his employees may not continue to remain disturbed and the dispute may be resolved through a judicial process as speedily as possible.

In another judgment rendered by the Hon'ble Apex Court in the case of Sambhu Nath Goyal v. Bank of Baroda, AIR 1978 SC 1088, while discussing the scope of Section 10(1) of the Industrial Disputes Act, 1947, the court pointed out that the power conferred on the Government by this provision to refer the dispute can be exercised only when there is an existing or apprehended industrial dispute.

So far as interference in the matter of reference by court of law is concerned, the Hon'ble Apex in the case of Avon Services (Production Agencies) Pvt. Ltd. v. IT, (1979) 1 LLJ 1 (SC), has been pleased to hold as follows:

"Section 10(1) of the Act confers power on the appropriate Government to refer at any time any industrial dispute which exists or is apprehended to the authorities mentioned in the section for adjudication. The opinion which the appropriate Government is required to form before referring the dispute to the appropriate authority is about the existence of a dispute or even if the dispute has not arisen, it is apprehended as imminent and requires resolution in the interest of industrial peace and harmony. Section 10(1) confers a discretionary power and this discretionary power can be exercised on being satisfied that an industrial dispute exists or is apprehended. There must be some material before the Government on the basis of which it forms an opinion that an industrial dispute exists or is apprehended. The power conferred on the appropriate Government is an administrative power and the action of the Government in making the reference is an administrative act. The formation of an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. Thus the jurisdictional facts on which the appropriate Government may act are the formation of an opinion that an industrial dispute exists or is apprehended which undoubtedly is a subjective one, the next step of making reference is an administrative act. The adequacy or sufficiency of the material on which the opinion was formed is beyond the pale of judicial scrutiny. If the action of the Government in making the reference is impugned by a party it would be open to such a party to show that what was referred was not an industrial dispute and that the Tribunal had no jurisdiction to make the Award but if the dispute was an industrial dispute, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for Government to decide upon, and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before Government on which it could have come to an affirmative conclusion on those matters see State of

Madras v. C.P. Sarathy, 1953 II LLJ 174."

In this regard, reference may be made in the case of Sambhu Nath Goyal v. Bank of Baroda(supra) wherein the Hon"ble Apex Court has been pleased to hold that it would be open to the party impugning the reference that there was no material before the government, and it would be open to the tribunal to examine the question, but that does not mean that it can sit in appeal over the decision of the Government and come to a conclusion that there was no material before the government. Furthermore, the question whether an industrial dispute existed on the date of the reference is a question of fact to be determined by the tribunal on the material placed before it.

5. From bare reading of the provision it is evident that when the appropriate Government makes a reference for adjudication it does not decide any question of fact and law. The only condition which the exercise of that power should satisfy, is that there should be existence or apprehension of an industrial dispute. When once the Government is satisfied about this question, it acquires jurisdiction to refer the dispute for adjudication. However, the order of reference can be challenged by establishing bad faith or mala fide and corrupt motive as bad faith will destroy any action. Bad faith or corrupt motive will be a matter to be established by the party alleging or propounding bad faith or corrupt motive by affirming and stating the facts. These facts are not only to be alleged but also have to be proved.

In this regard judgment rendered by the Apex Court in the case of M/s. Hochtief Gammon v. State of Orissa and others, reported in (1975)2 SCC 649 where under para-13 it has been observed which is being reproduced below:

"The Executive have to reach their decisions by taking into account relevant considerations. They should not refuse to consider relevant matter nor should they take into account wholly irrelevant or extraneous consideration. They should not misdirect themselves on a point of law. Only such a decision will be lawful. The courts have power to see that the Executive acts lawfully. It is no answer to the exercise of that power to say that the Executive acted bona fide nor that they have bestowed painstaking consideration. They cannot avoid scrutiny by courts by failing to give reasons. If they give reasons and they are not good reasons, the court can direct them to reconsider the matter in the light of relevant matters, though the propriety, adequacy or satisfactory character of those reasons may not be open to judicial scrutiny. Even if the Executive considers it inexpedient to exercise their powers they should state their reasons and there must be material to show that they have considered all the relevant facts."

In *Telco Conveyors Drivers Mazdoor Sangh v. State of Bihar*, reported in (1989)3 SCC 271, it has been held at para-13 by Hon"ble Apex Court which reads here under as: "Attractive though the contention is, we regret, we are unable to accept the same. It is now well settled that, while exercising power under

Section 10(1) of the Act, the function of the appropriate Government is an administrative function and not a judicial or quasi-judicial function, and that in performing this administrative function the Government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it by Section 10 of the Act."

In another judgment rendered by the Hon"ble Apex Court in the case of National Engineering Industries Ltd. v. State of Rajasthan and others, reported in AIR 2000 SC 469 wherein at para-26 it has been held which is being quoted here under:

"After having heard the learned advocates for the parties and after having gone through the pleadings of the parties made before the Assistant Labour Commissioner and after having carefully considered the contentions raised in the present petition as well as the authorities cited before the Court, the Court is of the view that the impugned order passed by the Assistant Labour Commissioner, Ahmedabad does not call for any interference of this Court while exercising its extraordinary writ jurisdiction under Articles 226 and 227 of the Constitution of India. While making the reference, the Assistant Labour Commissioner has observed that the industrial dispute pertaining to the matters regarding 16 lady workers is required to be referred to the Labour Court while exercising his powers vested in him under Section 10(1)(c) of the Industrial Disputes Act and the dispute was as to whether these 16 ladies should be reinstated in service in their original posts with full back wages for the intervening period. During the course of conciliation proceedings, the petitioner has filed its reply and counter reply was filed on behalf of the Union. The plain reading of the reply as well as counter reply makes it clear that the petitioner has raised the dispute as to whether these 16 ladies are the employees of the petitioner or whether the petitioner is an "Industry". The Union has filed its counter reply, wherein it is stated that these 16 ladies were the employees of the petitioner. The Assistant Labour Commissioner is not competent to decide as to whether these 16 ladies are the employees of the petitioner.

It requires adjudication and proper forum for adjudication is either the Industrial Tribunal or Labour Court. The Assistant Labour Commissioner has to merely discharge his function as an administrative officer. He has to record prima facie subjective satisfaction and after having come to this subjective satisfaction, he has to refer the dispute to the Labour Court or to the Industrial Tribunal. Whether particular person is an employee of the institute or not, requires leading of evidence oral as well as documentary. This could be done only at the level of either the Labour Court or Industrial Tribunal where both the parties do get the opportunity of leading their evidence. It is held by the Courts on number of occasions, that the proceedings should not be terminated prematurely. If the reference is rejected, the Conciliation Officer has to record the reasons for that under Section 12(5) of the Act. However, while making the reference, it is not

necessary to record any reason. Merely because the reasons are not recorded while making the reference, it cannot be said that the order is without application of mind. It is also important to note here that before the Assistant Labour Commissioner, the award passed by the Industrial Tribunal in the case of NID was pointed out wherein on similar situation, the Industrial Tribunal has come to the conclusion that those 31 ladies were the employees of National Institute of Design. It was also pointed out that the petition was pending before this Court being Special Civil Application No.8549 of 1988. The Court has also considered the relevant observations made by the Hon'ble Supreme Court in the decision of State of Madras v. C.P. Sarathy (supra) wherein, in no uncertain terms, the Supreme Court has observed that if the dispute was an industrial dispute as defined in the Act, its factual existence and expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon and it will not be competent for the Court to hold the reference bad and quash and set aside the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion. The Court has also considered the binding judgment of the Supreme Court and observations made therein which are squarely applicable to the facts of the present case. The determination of the questions or issues which are raised in this petition requires examination of factual matters and for that purpose, all relevant materials including oral as well as documentary evidence will have to be led before the Labour Court and same are required to be considered. If this is the situation then in that case, the Government could not arrogate unto itself the power to adjudicate on the question and hold that 16 ladies were not the workmen within the meaning of Section 2(s) of the Act and terminate the proceedings prematurely. This issue will have to be decided by the Industrial Tribunal or the Labour Court on the basis of the materials to be placed before it by the parties. Simply because the dispute is raised before this Court regarding employer-employee relationship or whether the petitioner is an "industry" or not, the order making reference passed by the Assistant Labour Commissioner cannot be quashed and set aside."

In the case of Anz Grindlays Bank Ltd. v. Union of India, reported in (2005) 12 SCC 738 wherein at paragraph-14 the Apex Court has held that:

"Mr. Bhat, learned Counsel for the second respondent, has submitted that this Court should not interfere with the order of the Central Government making a reference under Section 10 of the Act, as the appellant can ventilate its grievances before the Industrial Tribunal itself and if the decision of the Tribunal goes against the appellant, the same may be challenged in accordance with law. According to learned counsel the writ petition is premature as the appellant has got a remedy before the Tribunal to show that the reference is either bad in law or is uncalled for. We are unable to accept the submission made. It is true that normally a writ petition under Article 226 of the Constitution should not be entertained against an order of the appropriate Government making a reference under Section 10 of the Act, as the parties would get opportunity to lead

evidence before the Labour Court or Industrial Tribunal and to show that the claim made is either unfounded or there was no occasion for making a reference. However, this is not a case where the infirmity in the reference can be shown only after evidence has been adduced. In the present case the futility of the reference made by the Central Government can be demonstrated from a bare reading of the terms of the reference and the admitted facts. In such circumstances, the validity of the reference made by the Central Government can be examined in proceedings under Article 226 of the Constitution as no evidence is required to be considered for examining the issue raised."

It is settled that a writ petition lies only when rights of some parties have adversely been affected. A mere reference under section 10(1) of the Industrial Disputes Act does not affect any one rights and hence no writ petition should ordinarily been entertained against mere reference under section 10(1) as because the right will be said to be affected only when award is given by the Labour Court or Tribunal. The appropriate Government in order to adjudicate the disputed questions of fact since is referring the dispute in the power conferred under section 10(1) and as such the said disputed questions of fact has to be adjudicated and it cannot be thrown out at its threshold by the High Court sitting under Article 226 of the Constitution of India since a writ petition under Article 226 of the Constitution of India is not maintainable involving questions of fact, this aspect of the matter has been considered by the Hon"ble Apex Court in the case of Sanjay Sitaram Khemka v. State of Maharashtra and others, reported in (2006)5 SCC 255 wherein at paragraph-8 it has been held:

"Having regard to the allegations and counter allegations made by the parties before us, we are of the opinion that no relief can be granted to the petitioner in this petition. The writ petition has rightly been held by the High Court to be involving disputed questions of fact. The petitioner has several causes of action where for he is required to pursue specific remedies provided therefor in law."

6. There is no dispute about the fact that the industrial dispute is a piece of beneficent legislation and it has been promulgated for redressal of dispute relating to workmen and for that purpose Tribunal or Labour Court have been created in order to settle the dispute. For settlement of dispute when any dispute is being raised the first process is go for conciliation and if settlement has not been arrived at in course of conciliation proceeding, the Conciliation Officer in contemplation of power conferred under section 12(4) will submit failure report before the appropriate Government and the appropriate Government in exercise of power conferred under section 10(1) of the Industrial Disputes Act, 1947 is empowered to refer the dispute before the Labour Court or the Tribunal by making proper reference, meaning thereby the Reference since been based upon complex questions of facts and law and as such the dispute is being referred before the Tribunal or Labour Court for its adjudication by leading evidence in this regard by the parties. If at the threshold the Reference would be questioned by High Court sitting under Article 226 of the constitution of India the matter

would be said to be thrown out before its initiation and certainly it would not be proper for the reason that if any dispute is being adjudicated by any of the parties it has to be answered by proper adjudication.

In this regard, scope and importance of Industrial Disputes Act, 1947 which has been discussed by the Hon'ble Apex Court in the case of *Edukanti Kistamma (dead) through LRs. and others v. S. Venkatareddy (dead) through LRs. and others*, reported in (2010) 1 SCC 756 wherein at para-26 it has been held as enumerated herein below:

"26. ... Interpretation of a beneficial legislation with a narrow pedantic approach is not justified. In case there is any doubt, the court should interpret a beneficial legislation in favour of the beneficiaries and not otherwise as it would be against the legislative intent. For the purpose of interpretation of a statute, the Act is to be read in its entirety. The purport and object of the Act must be given its full effect by applying the principles of purposive construction. The court must be strong against any construction which tends to reduce a statute's utility. The provisions of the statute must be construed so as to make it effective and operative and to further the ends of justice and not to frustrate the same. The court has the duty to construe the statute to promote the object of the statute and serve the purpose for which it has been enacted and should not efface its very purpose...."

Thus, from a detail discussion of the statutory provision and the authoritative pronouncement in this regard, it is evident that the Industrial Disputes Act, 1947 has been formulated by the Legislature in order to resolve the dispute of the workers and when the appropriate Government has been conferred with power to take administrative decision regarding Reference of the dispute to be made before the Labour Court or the Tribunal, the same being administrative decision should not be interfered by the High Court sitting under Article 226 of the Constitution of India in the power of judicial review, rather approach of the Court should allow the parties to lead evidence for proper adjudication of the dispute, however if on bare reading of reference and the admitted facts if reference is found to be improper then it can be interfered with.

7. In the light of the statutory provision and authoritative pronouncement as discussed above, facts of this case is to be examined and the facts of the cases has been examined by us.

Admitted fact in this case is that the opposite party-workmen have raised dispute regarding their disengagement as well as finding of fact, failure report has been submitted before the appropriate Government and thereafter reference has been made for its adjudication.

8. Petitioner-management has raised a question that they are in no way concerned with the engagement or disengagement of the opposite party-workman since they have been engaged by the contractors who have been awarded work by the petitioner-company and as such the term of reference

making the petitioner-company necessary party is bad in the eye of law. All these facts needs adjudication by Tribunal by going through the documents and evidence and for that reference has been made. Petitioner-company has ever right to lead their evidence to rebut claim of the opposite party-workmen regarding relationship of employer-employee and certainly this cannot be done by the High Court sitting under Article 226 of the Constitution of India. Moreover, appropriate Government being competent under section 10(1) of the Industrial Disputes Act,1947 has been conferred with power to refer the dispute before the Tribunal having its jurisdiction in order to adjudicate the issue which itself goes to suggests the Legislature has provided a provision to adjudicate the dispute by allowing the party to lead their evidence in their support to rebut rival claims, decision taken by the appropriate Government under section 10(1) of the Industrial Disputes Act,1947 being administrative decision, it cannot be reviewed unless has been made in bad faith or mala fide and corrupt motive, but this is not the case of the petitioner-company here.

9. Accordingly, and on the basis of the statutory provision as well as authoritative dictum, we are of the conscious view that the order dated 2.11.2015 containing terms of reference under Schedule needs no interference. Hence, writ petition has got no merit and accordingly dismissed.

10. However, parties are at liberty to lead their evidence that shall be considered by the Tribunal in accordance with law.